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LEONG C LEI
PMB # 1008
1867 YGNACIO VALLEY ROAD
WALNUT CREEK CA 94598

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MAY 20 2008

OFFICE OF PETITIONS

In re Application of Mu-Lin Chen :
Application No. 09/781,246 :
Filing Date: February 13, 2001 :
For: Ratchet Wrench :

Decision on Petition

This is a decision on the petition under 37 CFR 1.137(b), filed August 29, 2007, to revive the above-identified application.

The petition is **DISMISSED**.

Facts:

The sole inventor, located in Taiwan, filed the application on February 13, 2001.

The Office mailed the inventor a non-final Office action on November 9, 2001. The Office action set an extendable three-month period for reply. The Office did not receive a reply. As a result, the application became abandoned Tuesday, February 12, 2002.

Patent Agent Leong Lei has stated the inventor did not reply to the non-final Office action because the inventor never received the Office action.

As a result of a heart attack, the inventor was hospitalized from September 28, 2002, to October 20, 2002. Rehabilitation and recovery required several months.

On October 10, 2002, during the time the inventor was hospitalized, the Office mailed a Notice of Abandonment.

The inventor contacted Patent Agent Lei during June of 2006.

A prior petition under 37 CFR 1.137(b) was filed July 21, 2006. A decision dismissing the petition was mailed December 22, 2006.

A second petition under 37 CFR 1.137(b) was filed January 29, 2007. A decision dismissing the petition was mailed July 3, 2007.

Discussion:

35 U.S.C. § 41(a)(7) authorizes the Commissioner to accept a petition "for the revival of an unintentionally abandoned application for a patent."

37 CFR 1.137(b)(3) provides that "[t]he Commissioner may require additional information where there is a question whether the delay was unintentional." Where there is a question whether the delay was unintentional, the petitioner must meet the burden of establishing that the delay was unintentional within the meaning of 35 U.S.C. § 41(a)(7) and 37 CFR 1.137(b).

The *current* record is simply insufficient to establish the entire period of abandonment was unintentional.

The address of record is sufficient to establish the initial period of delay was unintentional. If petitioner was unaware of the need to file a reply, then petitioner's failure to file a reply was not an intentional choice.

In order to establish the remaining period of delay was unintentional, petitioner must simply provide an explanation demonstrating at no time did the inventor intentionally make a choice not to prosecute, by reviving the application or by any other step, the application.

Petitioner must discuss when the inventor first learned the application was abandoned and the reason the inventor failed to take steps to revive the application. The showing required is not onerous. For example, if the inventor learned the application was abandoned, intended to file a petition to revive the application, and subsequently forgot about the entire matter for several years, the delay would be unintentional. Petitioner does *not* need to establish the inventor acted reasonably, diligently, or even rationally. Petitioner must only demonstrate the inventor never intended to "give up" on the prosecution of the application.

One common reason for abandoning an application is a conclusion the commercial value of an application fails to warrant the expenditure of additional time and effort in prosecuting the application. Petitioner may wish to discuss whether or not the inventor was given any reason during the months prior to contacting the patent agent to reevaluate the value of the application. For example, *if* the inventor's perception of the value of the application has never changed, one might conclude the inventor did not delay prosecution of the application due to a conclusion the value of the application failed to warrant such action.

The petitions and facts have been supplied by Patent Agent Lei. Any request for reconsideration should include a statement of facts signed by the inventor.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

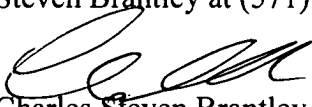
Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
 Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
 Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions